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Fifty-eighth session
Sixth Committee
Agenda item 151
Report of the United Nations Commission on International Trade Law on the work of its thirty-sixth session

Algeria, Australia, Austria, Brazil, Bulgaria, Canada, Chile, China, Colombia, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Finland, Germany, Greece, Guatemala, Hungary, India, Iran (Islamic Republic of), Ireland, Israel, Italy, Japan, Liechtenstein, Lithuania, Madagascar, Malaysia, Malta, Mexico, Morocco, New Zealand, Norway, Paraguay, Philippines, Romania, Serbia and Montenegro, Singapore, Slovakia, Slovenia, South Africa, Sweden, Switzerland, Thailand, Trinidad and Tobago, the former Yugoslav Republic of Macedonia, Turkey, United Kingdom of Great Britain and Northern Ireland and Venezuela: draft resolution

Report of the United Nations Commission on International Trade Law on the work of its thirty-sixth session

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Reaffirming its belief that the progressive modernization and harmonization of international trade law, in reducing or removing legal obstacles to the flow of international trade, especially those affecting the developing countries, would contribute significantly to universal economic cooperation among all States on a basis of equality, equity and common interest and to the elimination of discrimination in international trade and, thereby, to the well-being of all peoples,

Having considered the report of the Commission on its thirty-sixth session,[1]

[1] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 17* (A/58/17).

03-56339 (E) 171003

Concerned that activities undertaken by other bodies in the field of international trade law without adequate coordination with the Commission might lead to undesirable duplication of efforts and would not be in keeping with the aim of promoting efficiency, consistency and coherence in the unification and harmonization of international trade law,

Reaffirming the mandate of the Commission, as the core legal body within the United Nations system in the field of international trade law, to coordinate legal activities in this field, in particular to avoid duplication of efforts, including among organizations formulating rules of international trade, and to promote efficiency, consistency and coherence in the modernization and harmonization of international trade law, and to continue, through its secretariat, to maintain close cooperation with other international organs and organizations, including regional organizations, active in the field of international trade law, as stated in its resolution 50/47 of 11 December 1995,

Taking note of the proposals made by the Secretary-General in the proposed programme budget for the biennium 2004-2005 with a view to strengthening the secretariat of the Commission within the bounds of the resources available in the Organization so as to enable it to deal with the increased workload arising, inter alia, from the coordination of work with other organizations and growing demands for legislative technical assistance,[2]

1. *Takes note with appreciation* of the report of the United Nations Commission on International Trade Law on its thirty-sixth session;[3]

2. *Takes note with satisfaction* of the completion and adoption by the Commission of the Model Legislative Provisions on Privately Financed Infrastructure Projects;[3]

3. *Commends* the Commission for its approval in principle of the draft legislative guide on insolvency law,[4] elaborated in close cooperation with other international organizations, including the World Bank, the International Monetary Fund, the Asian Development Bank, the International Bar Association and the International Federation of Insolvency Professionals, and requests that the draft legislative guide be made available for comment to Member States, relevant intergovernmental and non-governmental organizations, as well as private sector and regional organizations and individual experts;

4. *Commends* the Commission for the progress made in the work on the draft legislative guide on secured transactions, on model legislative provisions on interim measures in international commercial arbitration and on issues of electronic contracting and transport law;

5. *Requests* the Commission and its secretariat, relying on its role as the core legal body within the United Nations system in the field of international trade law, to take the lead in assuring cooperation and coordination with the World Bank, the International Monetary Fund, regional economic commissions and other international organizations in the work on international legal texts and propose

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[2] Document A/58/6 (Sect. 8), paras. 8.13 and 8.48.

[3] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 17* (A/58/17), annex I.

[4] Ibid., *Supplement No. 17* (A/58/17), para. 197; see also A/CN.9/534.

appropriate and widely accepted international standards with due respect to the distinct objectives of the commission and the international financial institutions;

6. *Reaffirms* the importance, in particular for developing countries, of the work of the Commission concerned with training and legislative technical assistance in the field of international trade law, and in this connection:

(a) Expresses its appreciation to the Commission for organizing seminars and briefing missions in Bangladesh, Botswana, Burkina Faso, Cuba, Kazakhstan, Mongolia, New Zealand, Peru, the Republic of Korea, the Russian Federation, Serbia and Montenegro, Thailand and Viet Nam;

(b) Expresses its appreciation to the Governments whose contributions enabled the seminars and briefing missions to take place, and appeals to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the United Nations Commission on International Trade Law Trust Fund for Symposia and, where appropriate, to the financing of special projects, and otherwise to assist the secretariat of the Commission in carrying out training and legislative technical assistance activities, in particular in developing countries;

(c) Reiterates its appeal to the United Nations Development Programme and other bodies responsible for development assistance, such as the World Bank and regional development banks, as well as to Governments in their bilateral aid programmes, to support the training and legislative technical assistance programme of the Commission and to cooperate and coordinate their activities with those of the Commission;

7. *Appeals* to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the trust fund established to provide travel assistance to developing countries that are members of the Commission, at their request and in consultation with the Secretary-General;

8. *Decides*, in order to ensure full participation by all Member States in the sessions of the Commission and its working groups, to continue, in the competent Main Committee during the fifty-eighth session of the General Assembly, its consideration of granting travel assistance to the least developed countries that are members of the Commission, at their request and in consultation with the Secretary-General;

9. *Stresses* the importance of bringing into effect the conventions emanating from the work of the Commission for the global unification and harmonization of international trade law, and, to this end, urges States that have not yet done so to consider signing, ratifying or acceding to those conventions;

10. *Requests* the Secretary-General, in view of the continuing demands on personnel resources of the secretariat of the Commission resulting, inter alia, from the need for coordination among a growing number of international organizations in the field of international trade law and the growing demand for legislative technical assistance, to keep under review the level of resources available to the Commission in order to ensure its ability to carry out its mandate.

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Fifty-eighth session
Sixth Committee
Agenda item 151
Report of the United Nations Commission on International Trade Law on the work of its thirty-sixth session

Draft resolution

Model Legislative Provisions on Privately Financed Infrastructure Projects of the United Nations Commission on International Trade Law

The General Assembly,

Bearing in mind the role of public-private partnerships to improve the provision and sound management of infrastructure and public services in the interest of sustainable economic and social development,

Recognizing the need to provide an enabling environment that both encourages private investment in infrastructure and takes into account the public interest concerns of the country,

Emphasizing the importance of efficient and transparent procedures for the award of privately financed infrastructure projects,

Stressing the desirability of facilitating project implementation by rules that enhance transparency, fairness and long-term sustainability and remove undesirable restrictions on private sector participation in infrastructure development and operation,

Recalling the valuable guidance that the Commission has provided to Member States towards the establishment of a favourable legislative framework for private participation in infrastructure development through the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects,[1]

[1] United Nations publication, Sales No. E.01.V.4

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Believing that the Model Legislative Provisions on Privately Financed Infrastructure Projects of the United Nations Commission on International Trade Law will be of further assistance to States, in particular developing countries, in promoting good governance and establishing an appropriate legislative framework for such projects,

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for the completion and adoption of the Model Legislative Provisions on Privately Financed Infrastructure Projects, the text of which is contained in annex I to the report of the United Nations Commission on International Trade Law on its thirty-sixth session;[2]

2. *Requests* the Secretary-General to publish the Model Legislative Provisions and to make all efforts to ensure that the Model Legislative Provisions along with the *UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects*[1] become generally known and available;

3. *Also requests* the Secretary-General, subject to availability of resources, to consolidate in due course the text of the Model Legislative Provisions and the *UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects* into one single publication and, in doing so, to retain the legislative recommendations contained in the *Legislative Guide* as a basis of the development of the Model Legislative Provisions;

4. *Recommends* that all States give due consideration to the Model Legislative Provisions and the *UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects* when revising or adopting legislation related to private participation in the development and operation of public infrastructure.

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[2] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 17* (A/58/17).

United Nations A/C.6/58/L.13

General Assembly

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28 October 2003

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Fifty-eighth session
Sixth Committee
Agenda item 149
United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

Draft resolution

United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

The General Assembly,

Taking note with appreciation of the report of the Secretary-General on the implementation of the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law[1] and the guidelines and recommendations on future implementation of the Programme which were adopted by the Advisory Committee on the Programme and are contained in section III of the report,

Considering that international law should occupy an appropriate place in the teaching of legal disciplines at all universities,

Noting with appreciation the efforts made by States at the bilateral level to provide assistance in the teaching and study of international law,

Convinced, nevertheless, that States and international organizations and institutions should be encouraged to give further support to the Programme and increase their activities to promote the teaching, study, dissemination and wider appreciation of international law, in particular those activities which are of special benefit to persons from developing countries,

Reaffirming its resolutions 2464 (XXIII) of 20 December 1968, 2550 (XXIV) of 12 December 1969, 2838 (XXVI) of 18 December 1971, 3106 (XXVIII) of 12 December 1973, 3502 (XXX) of 15 December 1975, 32/146 of 16 December 1977, 36/108 of 10 December 1981 and 38/129 of 19 December 1983, in which it stated or recalled that in the conduct of the Programme it was desirable to use as far as possible the resources and facilities made available by Member States, international

[1] A/58/446.

organizations and others, as well as its resolutions 34/144 of 17 December 1979, 40/66 of 11 December 1985, 42/148 of 7 December 1987, 44/28 of 4 December 1989, 46/50 of 9 December 1991, 48/29 of 9 December 1993, 50/43 of 11 December 1995, 52/151 of 15 December 1997, 54/102 of 9 December 1999 and 56/77 of 12 December 2001, in which, in addition, it expressed or reaffirmed the hope that, in appointing lecturers for the seminars to be held within the framework of the fellowship programme in international law, account would be taken of the need to secure the representation of major legal systems and balance among various geographical regions,

1. *Approves* the guidelines and recommendations contained in section III of the report of the Secretary-General[1] and adopted by the Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, in particular those designed to achieve the best possible results in the administration of the Programme within a policy of maximum financial restraint;

2. *Authorizes* the Secretary-General to carry out in 2004 and 2005 the activities specified in his report, including the provision of:

(a) A number of international law fellowships in both 2004 and 2005, to be determined in the light of the overall resources for the Programme and to be awarded at the request of Governments of developing countries;

(b) A minimum of one scholarship in both 2004 and 2005 under the Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea, subject to the availability of new voluntary contributions made specifically to the fellowship fund;

(c) Subject to the overall resources for the Programme, assistance in the form of a travel grant for one participant from each developing country, who would be invited to possible regional courses to be organized in 2004 and 2005; and to finance the above activities from provisions in the regular budget, when appropriate, as well as from voluntary financial contributions earmarked for each of the activities concerned, which would be received as a result of the requests set out in paragraphs 11 to 13 below;

3. *Expresses its appreciation* to the Secretary-General for his constructive efforts to promote training and assistance in international law within the framework of the Programme in 2002 and 2003, in particular for the organization of the thirty-eighth[2] and thirty-ninth[3] sessions of the International Law Seminar, held at Geneva in 2002 and 2003, respectively, and for the activities of the Office of Legal Affairs of the Secretariat related to the fellowship programme in international law and to the Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea, carried out, respectively, through its Codification Division and its Division for Ocean Affairs and the Law of the Sea;

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[2] See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10* (A/57/10), chap. X, sect. E.

[3] Ibid., *Fifty-eighth Session, Supplement No. 10* and corrigendum (A/58/10 and Corr.1), chap. XI, sect. E.

4. *Requests* the Secretary-General to consider the possibility of admitting, for participation in the various components of the Programme, candidates from countries willing to bear the entire cost of such participation;

5. *Also requests* the Secretary-General to consider the relative advantages of using available resources and voluntary contributions for regional, subregional or national courses, as against courses organized within the United Nations system;

6. *Further requests* the Secretary-General to continue to provide the necessary resources to the programme budget for the Programme for the next and the future bienniums with a view to maintaining the effectiveness of the Programme;

7. *Welcomes* the efforts undertaken by the Office of Legal Affairs to bring up to date the United Nations *Treaty Series* and the *United Nations Juridical Yearbook*, as well as efforts made to place on the Internet the *Treaty Series* and other legal information;

8. *Expresses its appreciation* to the United Nations Institute for Training and Research for its participation in the Programme through the activities described in the report of the Secretary-General;

9. *Further expresses its appreciation* to The Hague Academy of International Law for the valuable contribution it continues to make to the Programme, which has enabled candidates under the fellowship programmes in international law to attend and participate in the Programme in conjunction with the Academy courses;

10. *Notes with appreciation* the contributions of The Hague Academy to the teaching, study, dissemination and wider appreciation of international law, and calls upon Member States and interested organizations to give favourable consideration to the appeal of the Academy for a continuation of support and a possible increase in their financial contributions, to enable the Academy to carry out its activities, particularly those relating to the summer courses, regional courses and programmes of the Centre for Studies and Research in International Law and International Relations;

11. *Requests* the Secretary-General to continue to publicize the Programme and periodically to invite Member States, universities, philanthropic foundations and other interested national and international institutions and organizations, as well as individuals, to make voluntary contributions towards the financing of the Programme or otherwise to assist in its implementation and possible expansion;

12. *Reiterates its request* to Member States and to interested organizations and individuals to make voluntary contributions, inter alia, for the International Law Seminar, the fellowship programme in international law, the Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea and the United Nations Audiovisual Library in International Law, and expresses its appreciation to those Member States, institutions and individuals which have made voluntary contributions for this purpose;

13. *Urges* in particular all Governments to make voluntary contributions for the organization of regional refresher courses in international law by the United Nations Institute for Training and Research, especially with a view to covering the amount needed for the financing of the daily subsistence allowance for up to twenty-five participants in each regional course, thus alleviating the burden on prospective

host countries and making it possible for the Institute to continue to organize the regional courses;

14. *Requests* the Secretary-General to report to the General Assembly at its sixtieth session on the implementation of the Programme during 2004 and 2005 and, following consultations with the Advisory Committee on the Programme, to submit recommendations regarding the execution of the Programme in subsequent years;

15. *Decides* to appoint twenty-five Member States, six from Africa, five from Asia, three from Eastern Europe, five from Latin America and the Caribbean and six from Western Europe and other States, as members of the Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, for a period of four years beginning on 1 January 2004.[4]

16. *Decides* to include in the provisional agenda of its sixtieth session the item entitled "United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law".

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[4] The following States have been appointed members of the Advisory Committee on the Programme: Canada, Colombia, Cyprus, Czech Republic, Ethiopia, France, Germany, Ghana, Iran (Islamic Republic of), Italy, Jamaica, Kenya, Lebanon, Malaysia, Mexico, Nigeria, Pakistan, Portugal, Russian Federation, Sudan, Trinidad and Tobago, Ukraine, United Republic of Tanzania, United States of America and Uruguay.

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General Assembly

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Fifty-eighth session
Sixth Committee
Agenda item 154
International Criminal Court

Draft resolution

International Criminal Court

The General Assembly,

Recalling its resolutions 47/33 of 25 November 1992, 48/31 of 9 December 1993, 49/53 of 9 December 1993, 50/46 of 11 December 1995, 51/207 of 17 December 1996, 52/160 of 15 December 1997, 53/105 of 8 December 1998, 54/105 of 9 December 1999, 55/155 of 12 December 2000, 56/85 of 12 December 2001 and 57/23 of 19 November 2002,

Noting that the Rome Statute of the International Criminal Court[1] was adopted on 17 July 1998 and entered into force on 1 July 2002,

Noting further that with the election of the judges and the Prosecutor and the appointment of the Registrar, the International Criminal Court is fully constituted,

Reiterating the historic significance of the adoption of the Rome Statute of the International Criminal Court,

1. *Calls upon* all States that are not yet parties to the Rome Statute of the International Criminal Court[1] to consider ratifying it or acceding to it without delay, and encourages efforts aimed at promoting awareness of the results of the United Nations Diplomatic Conference of Plenipotentiaries on the establishment of an International Criminal Court, held in Rome from 15 June to 17 July 1998, the provisions of the Statute and the process leading to the establishment of the International Criminal Court;

[1] *Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June-17July 1998*, vol. I: *Final documents* (United Nations publication, Sales No. E.02.I.5), sect. A.

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2. *Calls* upon all States to consider becoming parties to the Agreement on the Privileges and Immunities of the International Criminal Court;[2]

3. *Welcomes* the holding of the first and second resumptions of the First session and the Second session of the Assembly of States Parties, in New York from 3 to 7 February 2003, from 21 to 23 April 2003 and from 8 to 12 September 2003, respectively, the election of judges and the Prosecutor and the adoption of a number of instruments;[3]

4. *Takes note* of the establishment of the Special Working Group of the Assembly of States Parties to the Rome Statute of the International Criminal Court on the crime of aggression, open to all States on an equal footing, and of the possibility that at some future time the meeting of that working group may be held at United Nations Headquarters;

5. *Expresses* appreciation to the Secretary-General for providing effective and efficient assistance in the establishment of the International Criminal Court;

6. *Welcomes* the establishment of the Permanent Secretariat of the Assembly of States Parties to the Rome Statute of the International Criminal Court;

7. *Recognizes* the need for an orderly and smooth transition of work from the Secretariat of the United Nations to the secretariat of the Assembly of States Parties to the Rome Statute of the International Criminal Court;

8. *Invites* the Secretary-General to take steps to conclude a relationship agreement between the United Nations and the International Criminal Court and to present the negotiated draft agreement to the General Assembly for approval;

9. *Decides* to include in the provisional agenda of its fifty-ninth session the item entitled "International Criminal Court".

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[2] *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002* (United Nations publication, Sales No. E.03.V.2 and corrigendum), part II.E.

[3] The Staff Regulations of the International Criminal Court and a resolution on the establishment of the Permanent Secretariat of the Assembly of States Parties to the International Criminal Court.

United Nations A/C.6/58/L.15

General Assembly

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Fifty-eighth session
Sixth Committee
Agenda item 158
International convention against the reproductive cloning of human beings

Note verbale dated 17 October 2003 from the Permanent Mission of Cuba to the United Nations addressed to the Office of Legal Affairs of the United Nations Secretariat

The Permanent Mission of Cuba to the United Nations presents its compliments to the Office of Legal Affairs of the United Nations and has the honour to request that the annexed document should be circulated as a document of the fifty-eighth session of the General Assembly, under agenda item 158 (see annex).

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Annex to the note verbale dated 17 October 2003 from the Permanent Mission of Cuba to the United Nations addressed to the Office of Legal Affairs of the United Nations Secretariat

Scientific basis of cloning for therapeutic and research purposes

The birth in 1997 of Dolly the sheep, the world's first cloned mammal, was a milestone in the history of science.

The following year, *Science* magazine published an article on possible therapeutic applications of cloning, referring to the work of the laboratories of Dr. Thomson of the University of Wisconsin (United States of America) and of Dr. Itzkovitz of the National Medical Centre, Haifa (Israel).

For the first time in history human embryo parent cells were converted into blood cells. This discovery was the first genuine sign that such cells could be made into different types of human tissue.

That success brought closer the dream of developing treatments for leukaemia and other blood disorders.

"Cloning" means creating genetically identical structures.

- Therapeutic cloning uses a range of techniques, with the objective of producing parent cells.
- Parent cells — totipotent or stem cells — are immature, undifferentiated cells which have the ability to develop into differentiated, specialized cells of any one of the 200 or more varieties which make up the body.
- The technique of cloning involves making a cell composed of an egg (female reproductive cell) with its original nucleus replaced by a somatic cell. The resulting cell, created in vitro, is similar in many ways to a fertilized egg. Under suitable laboratory conditions, it can produce a blastocyst, which could in theory be transplanted into a uterus and grow into a foetus, or can be used as a source of stem cells in order to grow tissue.

The research using the nuclear-transfer techniques described above could be central to improving our basic knowledge on:

- How to influence a cell nucleus to activate the appropriate genes to produce a particular specialized cell;
- The genetic basis of human illnesses;
- Reprogramming defective human genes.

The opportunities presented by cultivating stem or totipotent cells are very promising and will perhaps remain one of the greatest advances in medicine for some time to come. For example, the technique will make it possible to produce genuine human cells for transplanting into a patient to repair damaged tissues or organs.

This makes it possible to obtain cells which are immuno-compatible with all receptors, something which is obviously useful in treating conditions as serious and varied as diabetes, Parkinson's disease and heart attacks, producing hope of positive

influence where once they were considered irreversible. Parent cells produced with the help of the patient would be appropriately altered to become differentiated into various cells, depending on the need: dopamine-producing nerve cells to treat Parkinson's disease, pancreatic beta cells for diabetics, hepatocytes for patients with cirrhosis of the liver, and so on.

Therapeutic cloning depends on being able to produce tissues which will not cause rejection problems. Any person could then have a tissue bank which was fully compatible because it was genetically identical to that person. This would solve the problems which currently affect transplants of tissues and organs.[a]

Therapeutic cloning would not only be useful in solving the problems of transplants. Brain cells which die off slowly as a result of irreversible, degenerative neurological disorders such as Alzheimer's disease could be replaced with fresh cells.

To sum up, cloning for therapeutic and research purposes has considerable scientific potential. As a matter of ethical obligation, that potential should be explored and developed.

Opponents of cloning carried out by the nuclear-transfer technique described above argue that it is possible to obtain stem cells from alternative sources. Recently some have claimed that adult stem cells have been proven to be sufficiently versatile and that therefore there is no need to obtain stem cells from very early human embryos. The consensus reached in the international scientific community is that the scientific findings reported so far do not support this conclusion. Currently, therefore, research on both adult and embryonic stem cells is vital for an appropriate evaluation of the prospects for stem cell therapy for the treatment of serious illnesses and disorders.[b]

A longer-term objective would be to learn to reprogramme somatic cells (for example, adult skin cells) to covert them into stem cells which are compatible with the patient without the need to resort to other techniques.

The use of cloning for reproductive purposes, however, should be totally excluded. Evidence has shown that when this type of reproduction is used in animals, there is a markedly higher incidence of foetal abnormalities and loss during the gestation period of mammals on which experiments have been carried out and of malformation and death among newborns. No one and nothing can guarantee, today, that the same will not apply to humans.

Prohibition of human reproductive cloning is essential, moreover, because such cloning is contrary to the generally accepted concept of human dignity and threatens future generations by endangering their health and their personal and social well-being. Furthermore, human reproductive cloning must be prohibited because it jeopardizes the diversity and uniqueness of the individual, imposing the risk of absurd projects for the mass production of human beings and making the individual vulnerable, inter alia, to new types of labour and social discrimination.

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[a] See enclosure on transplants.

[b] Draft declaration on human cloning, circulated to the academies of science of the world by the executive committee of the inter-academic panel, 27 May 2003.

Enclosure

Possible applications in the area of transplants

In the specific case of transplants, medicine is faced with the following problems which would be resolved by therapeutic cloning:

(a) Shortage of organs

The demand is greater than the supply.

(b) Immunological rejection

In order to alleviate rejection reactions, drugs are used which are not always effective.

With therapeutic cloning, damaged tissues would be replaced and there would be no rejection of transplanted organs since the transplanted tissue would correspond fully to the patient's genetic material and, therefore, there would be no incompatibility of any kind.

(c) Inadequate quality of organs

Transplants are carried out with donated organs, in many cases from older persons and cadavers. Problems of organ quality often arise, so that it is not unlikely that there will be situations such as: infections, viruses, cancerous cells, etc., which could be avoided with therapeutic cloning.

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Fifty-eighth session
Sixth Committee
Agenda item 157
Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel

Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel

Report of the Working Group on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel

Chairman: Mr. Christian **Wenaweser** (Liechtenstein)

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03-57159 (E) 221003

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I. Introduction

1. The General Assembly, in its resolution 56/89 of 12 December 2001, decided to establish the Ad Hoc Committee on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel to consider the recommendations made by the Secretary-General in his report on the measures to strengthen and enhance the protective legal regime for United Nations and associated personnel.[1] In accordance with paragraph 7 of the same resolution, membership on the Ad Hoc Committee was open to all States Members of the United Nations or members of the specialized agencies or the International Atomic Energy Agency (IAEA). The Ad Hoc Committee met from 1 to 5 April 2002, and presented a report to the General Assembly at its fifty-seventh session.[2]

2. Subsequently, the Ad Hoc Committee was reconvened, from 24 to 28 March 2003, pursuant to paragraph 8 of General Assembly resolution 57/28 of 19 November 2002, and continued the discussion on measures to enhance the existing protective legal regime for United Nations and associated personnel. The proceedings of the Ad Hoc Committee are summarized in its report to the General Assembly at its fifty-eighth session.[3]

3. During the fifty-eighth session of the General Assembly, following informal consultations, the Sixth Committee, at its 1st meeting, on 29 September 2003, established a Working Group on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel in order to continue the work of the Ad Hoc Committee. The Sixth Committee, at the same meeting, elected Christian Wenaweser (Liechtenstein) as the Chairman of the Working Group.

4. The Working Group held two meetings and a number of informal consultations from 13 to 17 October 2003. Because of the importance of the subject under consideration, the Working Group decided, at its first meeting, on 13 October 2003, to hold the formal meetings of the Working Group in open sessions.

5. The Working Group had before it the report of the last session of the Ad Hoc Committee[3] and the report of the Secretary-General,[4] prepared pursuant to the request by the General Assembly in its resolution 57/28, and taking into account the recommendations of the last session of the Ad Hoc Committee. The Working Group also had before it a letter dated 20 August 2003 from the Permanent Representative of Malaysia to the United Nations addressed to the Secretary-General.[5]

6. The Working Group considered and adopted its report at its 2nd meeting, on 17 October 2003.

II. Proceedings of the Working Group

7. The Working Group held a general exchange of views at its 1st meeting, on 13 October 2003. Discussions were subsequently held in informal consultations. An informal summary of the discussion in the Working Group, prepared by the Chairman, is set out in annex II to the present report. The summary is intended for reference purposes only, and not as an official record of the discussions.

III. Recommendations and conclusions

8. At its 2nd meeting, on 17 October, the Working Group decided to refer the present report to the Sixth Committee for its consideration and recommended that the Ad Hoc Committee established under General Assembly resolution 56/89 be reconvened with a mandate to expand the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel, including, inter alia, by means of a legal instrument.

Notes

[1] A/55/637.

[2] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 52* (A/57/52).

[3] Ibid., *Fifty-eighth Session, Supplement No. 52* (A/58/52).

[4] A/58/187.

[5] A/58/302.

Annex I

Written amendments and proposals submitted by delegations

A. Proposal by Costa Rica

New article 1 bis

The Convention shall not apply to any United Nations operation in which any personnel are engaged as combatants against organized armed forces and to which the international law of armed conflict applies.

Explanatory note

As noted in footnote 3 of the report of the Secretary-General on the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel (A/55/637), "the exclusion from the scope of application of the Convention of Chapter VII United Nations operations carried out in situations of international armed conflict, gives rise to the suggestion that enforcement actions carried out in situations of internal armed conflict (UNOSOM II type of operations), are included within the scope of the Convention and subject to its protective regime". Consequently, there is a need to clearly delineate the scope of application of the mutually exclusive regimes of international humanitarian law and the protective regime of the Convention.

The proposed language seeks to reflect the opinion expressed by the Secretary-General in the above-mentioned report that "in the final analysis, it is not the nature of the conflict which should determine the applicability of international humanitarian law or that of the Convention, but whether in any type of conflict, members of United Nations peacekeeping operations are actively engaged therein as combatants or are otherwise entitled to the protection given to civilians under the international law of armed conflict".

B. Proposal by Jordan

1. Replace article 1 (c) of the Convention

"United Nations operation" means an operation or presence established pursuant to a standing or specific mandate of a competent organ of the United Nations consistent with the Charter of the United Nations and conducted under United Nations authority and control:

(a) Where the operation is for the purpose of maintaining or restoring international peace and security;

(b) Where the operation is conducted in situations of armed conflict;

(c) Where the host State does not or is unable to establish and exercise national jurisdiction over crimes against United Nations and associated personnel or take all appropriate measures to ensure the safety of such personnel; or

(d) Where the United Nations operation is not conducted in a host State.

Explanatory note

(a) Purpose

1. To extend the scope of application of the Convention to certain United Nations operations where the personnel participating in the operation are deployed in a dangerous or risky environment, which warrants the special protection regime of the Convention.

2. To dispose of the requirement of a declaration of exceptional risk as a trigger mechanism for the application of the Convention when such an operation is not for the purpose of maintaining and restoring international peace and security.

(b) To which operations is the scope of the Convention extended?

Only United Nations operations where the situation on the ground renders the personnel involved in the operation more vulnerable to attacks than in normal situations:

1. Peacekeeping operations.

2. Armed conflict: whether international or not of an international character.

3. Where national laws in a host State do not provide sufficient legal protection to United Nations and associated personnel. In this regard, it is not necessary for the host State to specifically incriminate the crimes provided for under article 9 of the Convention against United Nations and associated personnel. However, it would be necessary that the general rules of criminal law in the host State incriminate attacks of the same nature as those found under article 9.

4. The host State must also have the means to implement and enforce its legislation incriminating attacks. Accordingly, in certain situations, such as mutinies and the collapse of government or other situations where the government is not able to exercise its sovereign authority, the special regime of legal protection of the Convention shall be extended to the operation.

5. The same also applies where the host State is unwilling or unable to take measures to ensure the safety of United Nations and associated personnel from attacks. The norm/test to be applied is whether the State has the capacity to take measures to ensure the safety of individuals in its territory.

6. United Nations operations are not necessarily conducted in a host *State*. Such operations are by nature risky because of the lack of State/government institutions that can provide sufficient legal protection for United Nations and associated personnel.

2. New article (xx)

1. Notwithstanding articles 7, 8 and 9 of the Convention, where the provisions of the Convention are extended to a United Nations operation in accordance with article 1 (c), the host State or transit State may exercise national jurisdiction over any United Nations or associated personnel who violate the laws and regulations of that State, unless the host State or transit State is bound to refrain from doing so under other existing international obligations.

2. Any lawful action taken by the host or transit State in accordance with paragraph 1 above is not deemed to be a crime under the Convention or to prevent the discharge of the mandate of the United Nations operation.

Explanatory note

The purpose of this article is to allow the host and transit States to exercise national jurisdiction against those personnel who violate the laws on regulations of the State. By extending the scope of the Convention to operations other than those intended to restore international peace and security, the sovereign right of the host/transit State to exercise its authorities when its laws and regulations are being violated would be restricted. Except when this State is already bound by other international obligation, such as the 1946 Convention on the Privileges and Immunities of the United Nations, there is no reason to grant United Nations and associated personnel immunity from the national jurisdiction of that State. It should be noted that only the *State* can practice its national jurisdiction. Accordingly, entities and individuals in the host/transit State who have government authority to implement and enforce national laws can exercise such authorities vis-à-vis such personnel.

Annex II

Informal summary of the general discussion in the Working Group, prepared by the Chairman

General statements

1. Delegations condemned acts of violence against United Nations and associated personnel and paid tribute to the United Nations staff members who lost their lives, inter alia, in the 19 August 2003 attack in Baghdad.

2. Some speakers welcomed the report of the Secretary-General on the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel (A/58/187) and Security Council resolution 1502 (2003). With reference to the Secretary-General's report, concern was expressed that only in very few cases were the perpetrators of the acts of violence against United Nations and associated personnel brought to justice. In response, it was noted that the statistics provided by the Secretary-General in his report, as well as recent casualties, could not serve as evidence of the flaws in the existing legal regime of the protection of United Nations and associated personnel. In their view, in practice, no legal measures could ensure the safety of United Nations and associated personnel without appropriate measures being taken by host States and the Secretary-General. Some speakers called for the universal adherence to the 1994 Convention on the Safety of United Nations and Associated Personnel and the implementation of the short-term measures enumerated in General Assembly resolution 57/28 and Security Council resolution 1502 (2003). Other delegations, while also subscribing to the goal of universality of the Convention and the implementation of the short-term measures, reiterated their position that longer-term solutions were required to address the shortcoming of the existing protective legal regime of United Nations and associated personnel. The view was also expressed that "universality", in the context of the 1994 Convention, had two aspects: the universal ratification of the Convention as well as its universal application, for which the expansion of its scope was necessary. Some delegations expressed the view that it was very important to maintain the legal regime under the existing Convention when examining ways of expanding its scope of application.

Consideration of the proposal by New Zealand (A/AC.264/2003/DP.1) and amendment thereto by the European Union (A/AC.264/2003/DP.3)

3. Some delegations supported the New Zealand proposal (A/AC.264/2003/DP.1) and the amendment thereto by the European Union (A/AC.264/2003/DP.3). They called for the elimination of the requirement of declaration of exceptional risk and reiterated their position that the Convention should automatically apply to all operations under United Nations control and authority without distinction. The expansion of the protective legal regime to all United Nations operations and presences raised objections, in particular on the ground that such an expansion would make the existing legal regime even more imbalanced by placing a greater burden on host States.

4. A discussion of the usefulness of the term "operations" took place, which seemed problematic to a number of delegations. Specifically, delegations expressed their reservations regarding the definition of the term in paragraph 7 of the Secretary-General's report (A/55/637). Some delegations expressed their willingness to explore different options to give a more precise definition of United Nations operations to which an expanded legal regime would apply, in particular by reflecting therein the notion of risk, with a view to dispensing with the declaration of exceptional risk that had proven to be an obstacle in the practical application of the Convention. The point was made that only those United Nations operations that were inherently risky, such as political, peace-building and humanitarian operations, should be within the expanded scope of the protective regime. Some operations and presences, such as those established by headquarters agreements, should be excluded. Support was expressed for the identification of categories of missions to be covered by the expanded regime on the basis of the designation of operations rather than situations in which they existed. A suggestion was made that a list could also be elaborated containing United Nations operations intended to be excluded from the expanded scope of the Convention. Conversely, it was noted that any arbitrary lists or lists entailing politicization should be avoided. There was agreement that it was worth exploring a definition of the term "operations" that did not cover all United Nations operations and was sufficiently clear.

Proposal by Jordan

5. Some delegations welcomed the proposal by Jordan, which, in their view, contained innovative ideas that preserved State sovereignty, sought to fill the gaps found in the Convention and addressed the concerns that had heretofore hindered universal adherence to the Convention.

6. Other delegations, felt that the proposal was too restrictive in the light of the way in which the element of risk was retained, and expressed concern that it could even result in reducing the scope of application of the Convention. According to another view, the retention of the notion of risk could be considered, subject to the setting forth of a clear and objective threshold.

7. The point was made that the proposal sought to deal with specific "situations", yet these tended to be fluid, requiring constant reassessment and analysis of the new circumstances and making the application of the Convention difficult. Therefore, preference was expressed for following the approach of discussing the types of United Nations operations, wherein certain categories posed risk by virtue of their very nature, that would be covered by the enlargement of the scope of the Convention. In this connection, while favouring the extension of the scope of application to all United Nations operations, it was noted that discussions could proceed on a purpose-specific definition of United Nations operations.

8. However, the point was also made that assessment of risky situations by national institutions such as the judiciary for purposes of applying legal obligations is not something alien to international law enforcement instruments.

9. It was also stated that subparagraph (b) of the proposal might affect other provisions of the Convention that had been carefully crafted in order to avoid conflict with the provisions of the 1949 Geneva Conventions. In this connection, the view was also expressed that it was not necessarily easy to characterize a situation

as being one of armed conflict and that it was precisely in such "grey" areas where United Nations operations were more exposed to hazard.

10. With regard to subparagraph (c) of the proposal, the point was made that the determination of whether or not a State exercised or was unwilling to exercise its national jurisdiction over relevant crimes constituted a subjective assessment, which raised the issue of who would make such a determination, one fraught with political connotations. Other Contracting States might be wary of making such an assessment. In this connection, attention was drawn to article 22 of the Convention, providing for a mechanism for dispute settlements. Some delegations, however, expressed the view that this mechanism might be too cumbersome and too slow in practice. It was noted that specificity and precision were vital to a law enforcement instrument.

11. Some delegations raised questions about the meaning of subparagraph (d), which was intended to apply to situations where there was no central government that could establish or provide legal protection. In their view the Convention could apply only if there was a government, since the responsibility is imposed on the government. For this reason they found the proposed subparagraph in contradiction with article 10 of the Convention, requiring a State to establish jurisdiction over the crimes listed in the Convention.

12. On the other hand, it was pointed out that subparagraph (d) was consistent with article 10 since a State party may establish jurisdiction over crimes committed outside its territory.

13. Some delegations expressed support for the proposed new article (xx) on the grounds that it would promote the universality of the Convention by eliminating a major obstacle to the adherence of some States. While supporting the spirit and intent of the article, the view was expressed that an exception should be made as regards personnel engaged in peacekeeping operations, with respect to whom the contributing State should exercise jurisdiction, unless unwilling to do so. In such cases, upon a decision by the Security Council, the host State would be able to exercise its jurisdiction. It was suggested that the proposed article appear as a separate article without any link to articles 7, 8 or 9 of the Convention, whose language should be preserved.

Form of the document to be elaborated

14. The Working Group considered the following options with regard to the form of the document to be elaborated on the scope of the 1994 Convention: (a) additional protocol; (b) optional protocol; (c) amendment to the 1994 Convention; (d) stand-alone protocol. It was generally agreed that setting up a new legal regime should not disturb the existing legal regime under the 1994 Convention. Therefore, several delegations expressed their preference for drafting a separate stand-alone document or an optional protocol. An optional protocol was preferable for some delegations because it would preserve the integrity of the existing legal regime while allowing States to take on additional obligations if they so wished. It was also pointed out that the creation of competing legal regimes had to be avoided. A view was expressed that certain provisions of the 1994 Convention may need to be reviewed if its scope is expanded. Yet a further opinion was expressed that the Convention had some problems that could be eliminated only by amending it. A

number of delegations rejected the idea of an amendment to the Convention and were generally favourable to the idea of drafting a protocol, while reserving their position on the eventual relationship between the protocol and the Convention until its content had been worked out. It was agreed that any modification to the Convention should be in the form of a protocol, while several delegations made it clear that their position on what type of protocol they would prefer was dependent on the actual contents of such a protocol.

Proposal by Costa Rica

15. In introducing the proposal, the sponsor noted that the protective legal regimes under the Convention and international humanitarian law were mutually exclusive. The 1994 Convention had, however, created an overlap between them. The proposal was introduced for discussion at a later stage.

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Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

Bulgaria, Russian Federation and Ukraine: draft resolution

Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions

The General Assembly,

Concerned about the special economic problems confronting certain States arising from the carrying out of preventive or enforcement measures taken by the Security Council against other States, and taking into account the obligation of Members of the United Nations under Article 49 of the Charter of the United Nations to join in affording mutual assistance in carrying out the measures decided upon by the Security Council,

Recalling the right of third States confronted with special economic problems of that nature to consult the Security Council with regard to a solution of those problems, in accordance with Article 50 of the Charter,

Recognizing the desirability of the consideration of further appropriate procedures for consultations to deal in a more effective manner with the problems referred to in Article 50 of the Charter,

Recalling:

(a) The report of the Secretary-General entitled "An Agenda for Peace",[1] in particular paragraph 41 thereof,

(b) Its resolution 47/120 A of 18 December 1992, entitled "An Agenda for Peace: preventive diplomacy and related matters", its resolution 47/120 B of 20 September 1993, entitled "An Agenda for Peace", in particular section IV thereof, entitled "Special economic problems arising from the implementation of preventive

[1] A/47/277-S/24111.

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or enforcement measures", and its resolution 51/242 of 15 September 1997, entitled "Supplement to an Agenda for Peace", in particular annex II thereto, entitled "Question of sanctions imposed by the United Nations",

(c) The position paper of the Secretary-General entitled "Supplement to an Agenda for Peace",[2]

(d) The statement by the President of the Security Council of 22 February 1995,[3]

(e) The report of the Secretary-General[4] prepared pursuant to the statement by the President of the Security Council[5] regarding the question of special economic problems of States as a result of sanctions imposed under Chapter VII of the Charter,

(f) The annual overview reports of the Administrative Committee on Coordination for the period from 1992 to 2000[6] and the annual overview reports of the United Nations System Chief Executives Board for Coordination for 2001 and 2002,[7] in particular the sections on assistance to countries invoking Article 50 of the Charter,

(g) The reports of the Secretary-General on economic assistance to States affected by the implementation of the Security Council resolutions imposing sanctions against the Federal Republic of Yugoslavia[8] and General Assembly resolutions 48/210 of 21 December 1993, 49/21 A of 2 December 1994, 50/58 E of 12 December 1995, 51/30 A of 5 December 1996, 52/169 H of 16 December 1997, 54/96 G of 15 December 1999, 55/170 of 14 December 2000 and 56/110 of 14 December 2001,

(h) The reports of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization on the work of its sessions held in the years 1994 to 2003,[9]

(i) The reports of the Secretary-General on the implementation of the provisions of the Charter related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter,[10]

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[2] A/50/60-S/1995/1.

[3] S/PRST/1995/9; see *Resolutions and Decisions of the Security Council*, 1995.

[4] A/48/573-S/26705.

[5] S/25036; see *Resolutions and Decisions of the Security Council*, 1992.

[6] E/1993/81, E/1994/19, E/1995/21, E/1996/18 and Add.1, E/1997/54 and Corr.1, E/1998/21, E/1999/48, E/2000/53 and E/2001/55.

[7] E/2002/55 and E/2003/55.

[8] A/49/356, A/50/423, A/51/356, A/52/535, A/54/534, A/55/620 and Corr.1, A/56/632 and A/58/358.

[9] *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 33* (A/49/33); ibid., *Fiftieth Session, Supplement No. 33* (A/50/33); ibid., *Fifty-first Session, Supplement No. 33* (A/51/33); ibid., *Fifty-second Session, Supplement No. 33* and corrigendum (A/52/33 and Corr.1); ibid., *Fifty-third Session, Supplement No. 33* (A/53/33); ibid., *Fifty-fourth Session, Supplement No. 33* and corrigendum (A/54/33 and Corr.1); ibid., *Fifty-fifth Session, Supplement No. 33* (A/55/33); ibid., *Fifty-sixth Session, Supplement No. 33* (A/56/33); ibid., *Fifty-seventh Session, Supplement No. 33* (A/57/33); and ibid., *Fifty-eighth Session, Supplement No. 33* (A/58/33).

[10] A/50/361, A/51/317, A/52/308, A/53/312, A/54/383 and Add.1, A/55/295 and Add.1, A/56/303, A/57/165 and Add.1 and A/58/346.

(j) The report of the Secretary-General to the Millennium Assembly of the United Nations[11], in particular section IV.E thereof, entitled "Targeting sanctions",

(k) The United Nations Millennium Declaration,[12] in particular paragraph 9 thereof,

(l) The report of the Secretary-General entitled "Road map towards implementation of the United Nations Millennium Declaration",[13] in particular paragraphs 56 to 61 thereof,

(m) The report of the Committee for Programme and Coordination on the work of its forty-third session, in particular the recommendation that the Chief Executives Board play a role in better coordinating the analysis of the problems of the countries invoking Article 50 of the Charter, and the development of new methodologies to identify the damage to affected States and new mechanisms to determine the appropriate compensation for them,[14]

Taking note of the report of the Secretary-General on the work of the Organization,[15] in particular paragraphs 68 and 69 thereof,

Recalling that the question of assistance to third States affected by the application of sanctions has been addressed recently in several forums, including the General Assembly, the Security Council, the Economic and Social Council and their subsidiary organs,

Recalling also the measures taken by the Security Council, in accordance with the statement by the President of the Security Council of 16 December 1994,[16] that, as part of the effort of the Council to improve the flow of information and the exchange of ideas between members of the Council and other States Members of the United Nations, there should be increased recourse to open meetings, in particular at an early stage in its consideration of a subject,

Recalling further the measures taken by the Security Council in accordance with the note by the President of the Security Council of 29 January 1999[17] aimed at improving the work of the sanctions committees, including increasing the effectiveness and transparency of those committees,

Stressing that, in the formulation of sanctions regimes, due account should be taken of the potential effects of sanctions on third States,

Stressing also, in this context, the powers of the Security Council under Chapter VII of the Charter and the primary responsibility of the Council under Article 24 of the Charter for the maintenance of international peace and security in order to ensure prompt and effective action by the United Nations,

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[11] A/54/2000.

[12] See resolution 55/2.

[13] A/56/326; see also the report of the Secretary-General on the implementation of the United Nations Millennium Declaration (A/58/323), para. 23

[14] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 16* (A/58/16), para. 581.

[15] Ibid; *Supplement No. 1* (A/58/1).

[16] See S/PRST/1994/81; see *Resolutions and Decisions of the Security Council, 1994*.

[17] S/1999/92; see *Resolutions and Decisions of the Security Council, 1999*.

Recalling that, under Article 31 of the Charter, any Member of the United Nations that is not a member of the Security Council may participate, without vote, in the discussion of any question brought before the Council whenever the latter considers that the interests of that Member are specially affected,

Recognizing that the imposition of sanctions under Chapter VII of the Charter has been causing special economic problems in third States and that it is necessary to intensify efforts to address those problems effectively,

Taking into consideration the views of third States which could be affected by the imposition of sanctions,

Recognizing that assistance to third States affected by the application of sanctions would further contribute to an effective and comprehensive approach by the international community to sanctions imposed by the Security Council,

Recognizing also that the international community at large and, in particular, international institutions involved in providing economic and financial assistance should continue to take into account and address in a more effective manner the special economic problems of affected third States arising from the carrying out of preventive or enforcement measures taken by the Security Council under Chapter VII of the Charter, in view of their magnitude and of the adverse impact on the economies of those States,

Recalling the provisions of its resolutions 50/51 of 11 December 1995, 51/208 of 17 December 1996, 52/162 of 15 December 1997, 53/107 of 8 December 1998, 54/107 of 9 December 1999, 55/157 of 12 December 2000, 56/87 of 12 December 2001 and 57/25 of 19 November 2002,

1. *Renews its invitation* to the Security Council to consider the establishment of further mechanisms or procedures, as appropriate, for consultations as early as possible under Article 50 of the Charter of the United Nations with third States which are or may be confronted with special economic problems arising from the carrying out of preventive or enforcement measures imposed by the Council under Chapter VII of the Charter, with regard to a solution of those problems, including appropriate ways and means for increasing the effectiveness of its methods and procedures applied in the consideration of requests by the affected States for assistance;

2. *Welcomes* the measures taken by the Security Council since the adoption of General Assembly resolution 50/51, most recently the note by the President of the Security Council of 15 January 2002,[18] whereby the members of the Security Council agreed to extend the mandate of the informal working group of the Council established in 2000[19] to develop general recommendations on how to improve the effectiveness of United Nations sanctions, looks forward to the adoption of the proposed outcome document of the working group, in particular those provisions thereof regarding the issues of the unintended impact of sanctions and assistance to States in implementing sanctions, and strongly recommends that the Council continue its efforts to enhance further the effectiveness and transparency of the sanctions committees, to streamline their working procedures and to facilitate access

[18] S/2002/70; see *Resolutions and Decisions of the Security Council, 2002*.

[19] See S/2000/319.

to them by representatives of States that find themselves confronted with special economic problems arising from the carrying out of sanctions;

3. *Invites* the Security Council, its sanctions committees and the Secretariat to continue to ensure, as appropriate, that:

(a) Both pre-assessment reports and ongoing assessment reports include as part of their analysis the likely and actual unintended impact of the sanctions on third States and recommend ways in which the negative impact of sanctions can be mitigated;

(b) Sanctions committees provide opportunities for third States affected by sanctions to brief them on the unintended impact of sanctions they are experiencing and on assistance needed by them to mitigate the negative impact of sanctions;

(c) The Secretariat continues to provide, upon request, advice and information to third States to help them to pursue means to mitigate the unintended impact of sanctions, for example, on invoking Article 50 of the Charter for consultation with the Security Council;

(d) Where economic sanctions have had severe effects on third States, the Security Council is able to request the Secretary-General to consider appointing a special representative or dispatching, as necessary, fact-finding missions on the ground to undertake necessary assessments and to identify, as appropriate, possible ways of assistance;

(e) The Security Council is able, in the context of situations referred to in subparagraph (d) above, to consider establishing working groups to consider such situations;

4. *Requests* the Secretary-General to pursue the implementation of General Assembly resolutions 50/51, 51/208, 52/162, 53/107, 54/107, 55/157, 56/87 and 57/25 and to ensure that the competent units within the Secretariat develop the adequate capacity and appropriate modalities, technical procedures and guidelines to continue, on a regular basis, to collate and coordinate information about international assistance available to third States affected by the implementation of sanctions, to continue developing a possible methodology for assessing the adverse consequences actually incurred by third States and to explore innovative and practical measures of assistance to the affected third States;

5. *Welcomes* the report of the Secretary-General containing a summary of the deliberations and main findings of the ad hoc expert group meeting on developing a methodology for assessing the consequences incurred by third States as a result of preventive or enforcement measures and on exploring innovative and practical measures of international assistance to the affected third States,[20] and renews its invitation to States and relevant international organizations within and outside the United Nations system which have not yet done so to provide their views regarding the report of the ad hoc expert group meeting;

6. *Takes note* of the most recent report of the Secretary-General on this question[21] and, in particular, of his views on the deliberations and main findings,[22]

[20] A/53/312.

[21] A/58/346.

[22] See A/57/165 and Add.1.

including the recommendations of the ad hoc expert group on the implementation of the provisions of the Charter related to assistance to third States affected by the application of sanctions, as well as the views of States, the organizations of the United Nations system, international financial institutions and other international organizations, as contained in the previous reports of the Secretary-General;[23]

7. *Reaffirms* the important role of the General Assembly, the Economic and Social Council and the Committee for Programme and Coordination in mobilizing and monitoring, as appropriate, the economic assistance efforts of the international community and the United Nations system on behalf of States confronted with special economic problems arising from the carrying out of preventive or enforcement measures imposed by the Security Council and, as appropriate, in identifying solutions to the special economic problems of those States;

8. *Takes note* of the decision of the Economic and Social Council, in its resolution 2000/32 of 28 July 2000, to continue its consideration of the question of assistance to third States affected by the application of sanctions, invites the Council, at its organizational session for 2004, to make appropriate arrangements for this purpose within its programme of work for 2004, further invites the Council to continue its consideration of the question of assistance to third States affected by the application of sanctions, and decides to transmit the most recent report of the Secretary-General on the implementation of the provisions of the Charter related to assistance to third States affected by the application of sanctions, together with the relevant background materials, to the Council at its substantive session of 2004;

9. *Invites* the organizations of the United Nations system, international financial institutions, other international organizations, regional organizations and Member States to address more specifically and directly, where appropriate, the special economic problems of third States affected by sanctions imposed under Chapter VII of the Charter and, for this purpose, to consider improving procedures for consultations to maintain a constructive dialogue with such States, including through regular and frequent meetings, as well as, where appropriate, special meetings between the affected third States and the donor community, with the participation of United Nations agencies and other international organizations;

10. *Requests* the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, at its session in 2004, to continue to consider on a priority basis the question of the implementation of the provisions of the Charter related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter by commencing a substantive debate on all of the related reports of the Secretary-General, in particular the 1998 report containing a summary of the deliberations and main findings of the ad hoc expert group meeting convened pursuant to paragraph 4 of General Assembly resolution 52/162,[20] together with the most recent report of the Secretary-General on this question,[21] taking into consideration the forthcoming report of the informal working group of the Security Council on general issues relating to sanctions, the proposals submitted on the question, the debate on the question in the Sixth Committee during the fifty-eighth session of the Assembly and the text on the question of sanctions imposed by the United Nations contained in annex II to Assembly resolution 51/242, as well as the implementation of the provisions of

[23] A/54/383 and Add.1 and A/55/295 and Add.1.

Assembly resolutions 50/51, 51/208, 52/162, 53/107, 54/107, 55/157, 56/87, 57/25 and the present resolution;

11. *Decides* to consider within the Sixth Committee or a working group of the Committee, at the fifty-ninth session of the General Assembly, further progress in the elaboration of effective measures aimed at the implementation of the provisions of the Charter related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter;

12. *Requests* the Secretary-General to submit a report on the implementation of the present resolution to the General Assembly at its fifty-ninth session, under the agenda item entitled "Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization".

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Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

Egypt: draft resolution

Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

The General Assembly,

Recalling its resolution 3499 (XXX) of 15 December 1975, by which it established the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, and its relevant resolutions adopted at subsequent sessions,

Recalling also its resolution 47/233 of 17 August 1993 on the revitalization of the work of the General Assembly,

Recalling further its resolution 47/62 of 11 December 1992 on the question of equitable representation on and increase in the membership of the Security Council,

Taking note of the report of the Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council,[1]

Recalling the elements relevant to the work of the Special Committee contained in its resolution 47/120 B of 20 September 1993,

Recalling also its resolution 51/241 of 31 July 1997 on the strengthening of the United Nations system and its resolution 51/242 of 15 September 1997, entitled "Supplement to an Agenda for Peace", by which it adopted the texts on coordination and the question of sanctions imposed by the United Nations, which are annexed to that resolution,

Recalling further that the International Court of Justice is the principal judicial organ of the United Nations, and reaffirming its authority and independence,

[1] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 47* (A/56/47).

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Considering the desirability of finding practical ways and means to strengthen the Court, taking into consideration, in particular, the needs resulting from its increased workload,

Taking note of the progress achieved on the revised working paper on the working methods of the Special Committee, as amended,

Taking note also of the report of the Secretary-General on the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*,[2]

Recalling its resolution 57/24 of 19 November 2002,

Having considered the report of the Special Committee on the work of its session held in 2003,[3]

Noting with appreciation the work done by the Special Committee to encourage States to focus on the need to prevent and to settle peacefully their disputes which are likely to endanger the maintenance of international peace and security,

1. *Takes note* of the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization;[3]

2. *Decides* that the Special Committee shall hold its next session from 29 March to 8 April 2004;

3. *Requests* the Special Committee, at its session in 2004, in accordance with paragraph 5 of General Assembly resolution 50/52 of 11 December 1995:

(a) To continue its consideration of all proposals concerning the question of the maintenance of international peace and security in all its aspects in order to strengthen the role of the United Nations and, in this context, to consider other proposals relating to the maintenance of international peace and security already submitted or which may be submitted to the Special Committee at its session in 2004;

(b) To continue to consider, on a priority basis, the question of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter by commencing a substantive debate on all of the related reports of the Secretary-General[4] and the proposals submitted on the question;

(c) To keep on its agenda the question of the peaceful settlement of disputes between States;

(d) To continue to consider proposals concerning the Trusteeship Council in the light of the report of the Secretary-General submitted in accordance with General Assembly resolution 50/55 of 11 December 1995,[5] the report of the Secretary-General entitled "Renewing the United Nations: a programme for

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[2] A/58/347.

[3] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 33* (A/58/33)

[4] A/48/573-S/26705, A/49/356, A/50/60-S/1995/1, A/50/361, A/50/423, A/51/317, A/52/308, A/53/312, A/54/383 and Add.1, A/55/295 and Add.1, A/56/303, A/57/165 and Add.1 and A/58/346.

[5] A/50/1011.

reform"[6] and the views expressed by States on this subject at previous sessions of the Assembly;

(e) To continue to consider, on a priority basis, ways and means of improving its working methods and enhancing its efficiency with a view to identifying widely acceptable measures for future implementation;

4. *Invites* the Special Committee at its session in 2004 to continue to identify new subjects for consideration in its future work with a view to contributing to the revitalization of the work of the United Nations;

5. *Notes* the readiness of the Special Committee, in the context of its consideration of the subject of assistance to working groups on the revitalization of the work of the United Nations and coordination between the Special Committee and other working groups dealing with the reform of the Organization, to provide, within its mandate, such assistance as may be sought at the request of other subsidiary bodies of the General Assembly in relation to any issues before them;

6. *Requests* the Special Committee to submit a report on its work to the General Assembly at its fifty-ninth session;

7. *Takes note* of paragraphs 37 and 38 of the report of the Secretary-General,[2] commends the Secretary-General for his continued efforts to reduce the backlog in the publication of the *Repertory of Practice of United Nations Organs*, and endorses the efforts of the Secretary-General to eliminate the backlog in the publication of the *Repertoire of the Practice of the Security Council*;

8. *Encourages* the Secretary-General in his continuous efforts to eliminate the backlog in the *Repertory of Practice of United Nations Organs* and in the *Repertoire of the Practice of the Security Council*, including by exploring options involving cooperation with academic institutions as a means to achieve this aim without prejudice to the continuation of their timely publication;

9. *Commends* the Secretary-General for his initiative to make *Repertory* studies available on the Internet;

10. *Requests* the Secretary-General to make every effort, within the level of the currently approved budget, towards making available electronically all versions of the *Repertory of Practice of United Nations Organs* as early as possible;

11. *Requests* the Secretary-General to submit a report on both the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* to the General Assembly at its fifty-ninth session.

12. *Decides* to include in the provisional agenda of its fifty-ninth session the item entitled "Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization".

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[6] A/51/950 and Add.1-7.